

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Before the court is defendant DTE Energy’s (“DTE”) motion for judgment on the pleadings. Doc. #32.¹ Plaintiff Naomi Heneage (“Heneage”) filed an opposition (Doc. #38) to which DTE replied (Doc. #39).

I. Facts and Background

Heneage is a former supervisory employee of DTE at the TS Power Plant in Dunphy, Nevada. Heneage began her employment with DTE on February 26, 2007.

Beginning in late 2010, defendant Newmont Nevada Energy Investment, LLC (“NEI”) took over running the power plant. Heneage, along with all DTE employees, was terminated by defendant DTE on June 30, 2010, and was not subsequently selected for retention employment with NEI.

¹ Refers to the court's docket number.

1 In response, Heneage filed a wrongful termination complaint against defendants alleging
 2 two causes of action: (1) Title VII discrimination - all defendants; and (2) FMLA retaliation - DTE.
 3 Doc. #2. Thereafter, DTE filed the present motion for judgment on the pleadings. Doc. #32.

4 **II. Legal Standard**

5 “After the pleadings are closed—but early enough not to delay trial—a party may move for
 6 judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Judgment on the pleadings is proper when
 7 there are no issues of material fact, and the moving party is entitled to judgment as a matter of
 8 law.” *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational*
 9 *Church*, 887 F.2d 228, 230 (9th Cir. 1989). In ruling on a motion for judgment on the pleadings,
 10 the court accepts as true all well-pleaded factual allegations by the nonmoving party and construes
 11 the facts in the light most favorable to that party. *Id.* Thus, when brought by a defendant, the same
 12 legal standard applies to a post-answer Rule 12(c) motion for judgment on the pleadings as applies
 13 to a pre-answer Rule 12(b)(6) motion to dismiss for failure to state claim upon which relief can be
 14 granted. *See Johnson v. Rowley*, 569 F.3d 40, 43-44 (2d Cir. 2009); *see also* Fed. R. Civ. P.
 15 12(h)(2)(B) (providing the defense of failure to state a claim may be raised by a motion under Rule
 16 12(c)); *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980) (holding that a post-answer Rule
 17 12(b)(6) motion should be treated as a Rule 12(c) motion).

18 To survive a motion to dismiss for failure to state a claim, a complaint must satisfy the
 19 Federal Rule of Civil Procedure 8(a)(2) notice pleading standard. *See Mendiondo v. Centinela*
 20 *Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That is, a complaint must contain “a short
 21 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
 22 8(a)(2). The Rule 8(a)(2) pleading standard does not require detailed factual allegations; however, a
 23 pleading that offers “‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause
 24 of action’” will not suffice. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic*
 25 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

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1 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,
 2 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting
 3 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows
 4 the court to draw the reasonable inference, based on the court’s judicial experience and common
 5 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. “The plausibility
 6 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a
 7 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a
 8 defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to
 9 relief.” *Id.* at 1949 (internal quotation marks and citation omitted).

10 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as
 11 true. *Id.* However, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of
 12 the elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret*
 13 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)
 14 (internal quotation marks omitted). The court discounts these allegations because “they do nothing
 15 more than state a legal conclusion—even if that conclusion is cast in the form of a factual
 16 allegation.” *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) “In sum, for a complaint to survive a motion to
 17 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be
 18 plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

19 **III. Discussion**

20 Plaintiff Heneage alleges two separate causes of action against defendant DTE: (1) Title VII
 21 discrimination; and (2) FMLA relation. Doc. #2. Heneage’s Title VII claim is based on two
 22 theories: (1) that she was terminated by DTE on the basis of her gender; and (2) that she was
 23 terminated by DTE in retaliation for her failure to retaliate against her subordinate for instituting a
 24 hostile working environment investigation. The court shall address each claim below.

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1 **A. Gender Discrimination**

2 Title VII prohibits discrimination against an employee or an applicant for employment on
 3 the basis of race, color, religion, sex, or national origin. *See* 42 U.S.C. § 2000e-2(a). To prevail on a
 4 Title VII discrimination claim, a plaintiff must establish a *prima facie* case of discrimination by
 5 presenting evidence that “gives rise to an inference of unlawful discrimination.” *Cordova v. State*
 6 *Farm Ins. Co.*, 124 F.3d 1145, 1148 (9th Cir. 1997); *see also McDonnell Douglas Corp. v. Green*,
 7 411 U.S. 792, 802 (1973). A plaintiff can establish a *prima facie* case of discrimination through the
 8 burden shifting framework set forth in *McDonnell Douglas. Metoyer v. Chassman*, 504 F.3d 919,
 9 931 (9th Cir. 2007).

10 Under the *McDonnell Douglas* framework, the plaintiff carries the initial burden of
 11 establishing a *prima facie* case of discrimination. *McDonnell Douglas*, 411 U.S. at 802. To
 12 establish a *prima facie* case, the plaintiff must show that (1) she belongs to a protected class; (2) she
 13 was qualified for her position and was performing her job satisfactorily; (3) she suffered an adverse
 14 employment action; and (4) similarly situated individuals outside her protected class were treated
 15 more favorably. *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008) (citing *Chuang v.*
 16 *Univ. of Cal. Davis*, 225 F.3d 1115, 1126 (9th Cir. 2000)); *see also, Bodett v. Coxcom, Inc.*, 366
 17 F.3d 726, 743 (9th Cir. 2004); *Orr v. Univ. Med. Ctr.*, 51 Fed. Appx. 277 (“An implicit part of the
 18 “qualification” requirement is that the plaintiff was performing her job satisfactorily).

19 The court has reviewed the documents and pleadings on file in this matter and finds that
 20 Heneage has failed to allege a *prima facie* Title VII gender discrimination claim against DTE. In
 21 her complaint, Heneage alleges that she was terminated by DTE while other male employees were
 22 not terminated and were employed by NEI. However, it is undisputed that *all* DTE employees were
 23 terminated and then had to apply for new job openings with defendant NEI. Thus, it is undisputed
 24 that she did not suffer any adverse employment action by DTE that other male employees at DTE
 25 did not suffer as all DTE employees were terminated. Therefore, Heneage fails to sufficiently allege
 26 a claim for gender discrimination.

1 **B. Retaliation**

2 In addition to prohibiting gender discrimination, Title VII also prohibits retaliation by
3 making it unlawful “for an employer to discriminate against any of [its] employees or applicants for
4 employment because [she] has opposed any practice that is made an unlawful employment practice
5 by this subchapter.” 42 U.S.C. § 2000e-3(a). To establish a *prima facie* case of retaliation, a
6 plaintiff must show (1) involvement in a protected activity, (2) an adverse employment action, and
7 (3) a causal link between the two. *Brooks*, 229 F.3d at 928 (citing *Payne v. Norwest Corp.*, 113
8 F.3d 1079, 1080 (9th Cir. 1997)).

9 Here, as above, it is undisputed that *all* DTE employees were terminated and had to apply
10 for open job positions with defendant NEI. Thus, it is undisputed that Heneage did not suffer an
11 adverse employment action that was causally linked to her engaging in protected activity because
12 all employees were terminated, not just her. Therefore, the court finds that Heneage fails to state a
13 claim for retaliation against DTE.

14 **C. FMLA Retaliation**

15 To establish a claim for retaliation or interference under the Family Medical Leave Act
16 (“FMLA”) a plaintiff must allege: (1) that she exercised her rights under the act; (2) defendant
17 engaged in activity designed to chill her exercise of those rights; and (3) the defendant’s activities
18 were motivated by the exercise of those rights. *See Bachelder v. America West Airlines, Inc.*, 259
19 F.3d 1112, 1124-26 (9th Cir. 2001).

20 In her complaint, Heneage alleges that defendant DTE interfered with her rights under the
21 FMLA by refusing to return her to her supervisory position after she took medical leave for a
22 surgical procedure. *See* Doc. #2. However, once again, it is undisputed that defendant DTE
23 terminated all employees under its control as it no longer was the employer operating the power
24 plant. Thus, there was no position with defendant DTE that she could be returned to. Therefore, the
25 court finds that Heneage fails to state a claim for retaliation against DTE. Accordingly, the court
26 shall grant DTE’s motion to dismiss.

1 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #32) is
2 GRANTED. Defendant DTE Energy Services, Inc. is DISMISSED as a defendant in this action.

3 IT IS SO ORDERED.

4 DATED this 28th day of January, 2013.



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LARRY R. HICKS
7 UNITED STATES DISTRICT JUDGE
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